

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 1:17-cv-11815-JCB

**MELISSA WILLIS AND RALPH TONEY,
INDIVIDUALLY AND AS THE PERSONAL
REPRESENTATIVES OF THE ESTATE OF
KYZR LEE WILLIS; AND RALPH TONEY, JR.**

Plaintiffs,

v.

**CITY OF BOSTON; MARTIN J. WALSH,
MAYOR OF BOSTON; WILLIAM MORALES,
BOSTON CENTER FOR YOUTH AND FAMILIES
COMMISSIONER; FREDERICK B. AHERN, JR.,
CURLEY COMMUNITY CENTER DIRECTOR
AND ADMINISTRATIVE COORDINATOR;
ALLISON BAKER, CURLEY COMMUNITY
CENTER SUMMER PROGRAM SUPERVISOR;
JANE DOE, CURLEY COMMUNITY CENTER
CAMP COUNSELOR**

Defendants.

CITY OF BOSTON'S PARTIAL MOTION TO DISMISS

The Defendant, City of Boston ("City"), hereby moves this Court, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss Plaintiffs' wrongful death claim (Count I) and intentional infliction of emotional distress claim (Count XII).¹ As reasons therefore, the City submits that Plaintiffs' wrongful death claim, to the extent it is asserted as a claim separate and distinct from their negligence claim, is not cognizable as a matter of law. Further, any intentional infliction of

¹ The City is not moving to dismiss Plaintiffs' negligence claim.

emotional distress claim against the City is barred pursuant to the Massachusetts Tort Claims Act.

In support of this Motion, the City respectfully refers the Court to its Memorandum of Law, filed herewith.

WHEREFORE, the City respectfully requests that Plaintiffs' wrongful death claim and intentional infliction of emotional claim be dismissed with prejudice.

CERTIFICATE OF SERVICE

I hereby certify that on this day, a copy of this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants.

/s/ Nicole O'Connor

Nicole M. O'Connor

Date: 10/25/17

Respectfully submitted:

DEFENDANT, CITY OF BOSTON

By its attorneys:

Eugene L. O'Flaherty
Corporation Counsel

/s/ Nicole M. O'Connor

Nicole M. O'Connor (BBO#675535)
Senior Assistant Corporation Counsel
Erika P. Reis (BBO#669930)
Senior Assistant Corporation Counsel
City of Boston Law Department
Boston, MA 02201

(617) 635-4039 (O'Connor)

(617) 635-4031 (Reis)

Nicole.OConnor@boston.gov

Erika.Reis@boston.gov

LOCAL RULE 7.1 CERTIFICATION

I hereby certify that on October 25, 2017, I conferred with Plaintiffs' counsel via telephone pursuant to Local Rule 7.1 in a good faith effort to resolve or narrow the issues presented in this motion. Despite this conference, the filing of the attached motion is necessary to resolve the issues stated therein.

/s/ Nicole M. O'Connor
Nicole M. O'Connor